

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**UCHECHI AMUNEKE-NZE a/k/a
ESTHER,**
Plaintiff

v.

KELLY CRAIN and MARK TICER,
Defendants

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Case No. 1:23-CV-00337-RP-SH

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE**

Now before the Court are Plaintiff's Original Complaint, filed March 28, 2023 (Dkt. 1), and Plaintiff's Response to the Court's Order for a More Definite Statement, filed May 19, 2023 (Dkt. 6). The District Court referred this case to this Magistrate Judge for Report and Recommendation as to whether the case should be dismissed as frivolous under 28 U.S.C. 1915(e) pursuant to Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas and the Court Docket Management Standing Order for United States District Judge Robert Pitman. Dkt. 4.

In her Response, Plaintiff requested permission to file an Amended Complaint. Dkt. 6 at 2. The Court ordered Plaintiff to file an Amended Complaint by June 16, 2023, but she has not done so. Dkt. 8. A district court may dismiss an action *sua sponte* for failure to prosecute or to comply with any order of court under Federal Rule of Civil Procedure 41(b). *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). Because Plaintiff failed to abide by a Court Order and to prosecute her case by filing an Amended Complaint, the Court recommends that the case be dismissed.

I. Recommendation

This Magistrate Judge **RECOMMENDS** that the District Court **DISMISS** this case without prejudice pursuant to Rule 41(b).

It is **ORDERED** that the Clerk **REMOVE** this case from the Magistrate Court's docket and **RETURN** it to the docket of the Honorable Robert Pitman.

II. Warnings

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except on grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED on June 20, 2023.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE